

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 49-005(a)(1)

Specific Purpose:

This section is being amended to add the term “New Affidavit of Support” and to equate it to other listed term of “Affidavit (New Version).”

Factual Basis:

This amendment is necessary because the term “New Affidavit of Support” is used frequently throughout these regulations.

Section 49-005(a)(2)

Specific Purpose:

This section is being amended to add the term “Old Affidavit of Support,” state who signs the form, and to equate it to other listed term of “Affidavit (Old Version).”

Factual Basis:

This amendment is necessary because the term “Old Affidavit of Support” is used frequently throughout these regulations.

Sections 49-005(b)(1) through (b)(1)(B)2.

Specific Purpose:

These sections are being adopted to provide a definition for “basic California Assistance Program for Immigrants (CAPI)” as reflecting the original eligibility component of CAPI, which was effective December 1, 1998, and to list the criteria for basic CAPI eligibility.

Factual Basis:

This adoption is necessary for ease of reference to define a term used to differentiate between the “basic CAPI” eligibility component under Welfare and Institutions Code Sections 18938(a)(1) and (2), and the term “extended CAPI” for eligibility under Welfare and Institutions Code Section 18938(a)(3). It is also necessary to make clear who is eligible for basic CAPI.

Section 49-005(d)(1)

Specific Purpose:

This section is being adopted to define the “Department” as meaning the California Department of Social Services.

Factual Basis:

This section is necessary to specify that the California Department of Social Services is the Department responsible for supervising administration of CAPI, as specified in Welfare and Institutions Code Section 18937.

Sections 49-005(e)(4) through (e)(4)(C)3.

Specific Purpose:

These sections are being adopted to provide a definition for “extended CAPI” as reflecting the amended eligibility component of CAPI, which was effective October 1, 1999, and to list the criteria for extended CAPI eligibility.

Factual Basis:

This section is necessary for ease of reference to define a term used to differentiate between the “extended CAPI” eligibility component under Welfare and Institutions Code Section 18938(a)(3), and the term “basic CAPI” for eligibility under Welfare and Institutions Code Sections 18938(a)(1) and (2). It is also necessary to make clear who is eligible for extended CAPI.

Section 49-020.2

Specific Purpose:

This section is being amended to specify that all immigrants who entered the United States prior to August 22, 1996 (who meet all other eligibility requirements) are eligible for basic CAPI, but not extended CAPI. Other eligibility criteria are substantially different for people who meet just the requirements in Welfare and Institutions Code Section 18938(a)(3). For ease of reference, non-citizens who meet the original CAPI criteria established in Welfare and Institutions Code Sections 18938(a)(1) and (2) are referred to as being eligible for basic

CAPI. This section, as amended, refers only to those persons who meet the requirements of Welfare and Institutions Code Section 18938(a)(1).

Factual Basis:

This amendment is necessary to comply with the provisions of Welfare and Institutions Code Section 18938. Welfare and Institutions Code Section 18938(a)(3) was first added by amendment in 1999. It established new criteria for immigrants who entered the United States on or after August 22, 1996. Non-citizens who only meet the relatively new eligibility criteria reflected in Welfare and Institutions Code Section 18938(a)(3) are referred to as being eligible for extended CAPI.

Section 49-020.3

Specific Purpose:

This section is being amended to specify that there are two different sets of immigration status standards for persons legally entering the United States on or after August 22, 1996. It introduces the terms 'basic' and 'extended' CAPI to differentiate the two eligibility components.

Factual Basis:

This amendment is necessary to comply with Welfare and Institutions Code Sections 18938(a)(2) and (3), which establish two different sets of eligibility rules regarding sponsor restrictions for persons entering the United States on or after August 22, 1996.

Section 49-020.31

Specific Purpose:

This section is being amended to clarify that the eligibility rules regarding sponsor restrictions outlined in this section only apply to basic CAPI.

Factual Basis:

This amendment is necessary to clarify that the sponsor restrictions listed in this section only apply to basic CAPI.

Section 49-020.32

Specific Purpose:

This section is being amended to specify that to be eligible for ‘extended’ CAPI a non-citizen who entered the United States on or after August 22, 1996 must be ineligible for basic CAPI under any of the conditions described in MPP Sections 49-020.31 through .313. It also specifies that extended CAPI is effective October 1, 1999.

Factual Basis:

This amendment is necessary to be consistent with Welfare and Institutions Code Section 18938(a)(3).

Section 49-035.723

Specific Purpose/Factual Basis:

This section is amended to add a hyphen in the word ‘non-citizen’ for consistency.

Sections 49-035.723(b) through (b)(2)

Specific Purpose:

These sections are being amended to specify that the length of the deeming period depends on the type of Affidavit signed, and, for persons entering the United States on or after August 22, 1996, whether the person is eligible for basic or extended CAPI. Section 49-035.723 is amended to hyphenate the word “non-citizen” for consistency. Minor amendments are also made for clarity.

Factual Basis:

These amendments are necessary to comply with the deeming rules used in the SSI/SSP program as described in 20 CFR 416.1166a, 8 USC 1631, and Welfare and Institutions Code Section 18940(b).

Section 49-035.723(c)

Specific Purpose:

This section is being adopted to refer to Section 49-037 for detailed instructions on when sponsor deeming applies, length of sponsor-deeming periods, and exceptions to sponsor deeming.

Factual Basis:

Section 49-037 is being adopted for ease of reference and clarity since the same sponsor-deeming rules apply to the deeming of both the sponsor's income and the sponsor's resources. Referrals to this section are made for determining what deeming rules apply for the deeming of both income and resources, instead of repeating the complex set of rules in both the income and resource sections.

Sections 49-035.723(c)(1) through (d)(3)

Specific Purpose/Factual Basis:

See Factual Basis for Section 49-035.723(c).

Section 49-037

Specific Purpose/Factual Basis:

This section is being adopted for ease of reference and clarity since the same sponsor-deeming rules apply to the deeming of both the sponsor's income and resources.

Section 49-037.1

Specific Purpose:

This section is being adopted to clarify that sponsor deeming encompasses a set of regulations including counting income and resources of the sponsor as belonging to the non-citizen, verifying sponsor's information, establishing the correct deeming period, interaction with other deeming rules, and applying appropriate exceptions and exclusions in determining CAPI eligibility. It also specifies that sponsor-deeming rules apply regardless of whether or not the sponsor actually provides the non-citizen with any support.

Factual Basis:

This section is necessary to describe the types of sponsor-deeming rules in the rest of this section that are reflective of the SSI rules and regulations found in 20 CFR 416.1160, 416.1166a and 416.1204; Social Security Administration's Program Operations Manual System (POMS) SI 00502.240, SI 00502.280, SI 01320.910, SI 01320.915 and SI 01320.920; and Welfare and Institutions Code Section 18940.

Sections 49-037.2 through .213

Specific Purpose:

These sections are being adopted to specify the rules for a non-citizen whose sponsor signed the New Affidavit of Support.

Section 49-037.21 specifies that the deeming from a sponsor who signs the New Affidavit of Support applies – for non-citizens eligible for basic CAPI – unless or until the sponsor dies, the non-citizen becomes a naturalized citizen, or the non-citizen is credited with 40 quarters of coverage as defined under Title II of the Social Security Act.

Sections 49-037.211 through .213 are renumbered from Section 49-035 for clarity and ease of use.

Factual Basis:

These sections are necessary to reflect that the deeming period for the New Affidavit under federal law as previously reflected in MPP Section 49-035.723(c) only applies to those non-citizens who are eligible for basic CAPI [under Welfare and Institutions Code Sections 18938(a)(1) and (2)]. Welfare and Institutions Code Section 18940(b) requires federal deeming rules apply to all persons who are not eligible for extended CAPI.

Final Modification

Section 49-037.21 is amended to remove the words “or until” as these words aren’t necessary. Sections 49-037.211 and .212 are amended to add the word “or” for clarity.

Section 49-037.22

Specific Purpose:

This section is being adopted to specify that for non-citizens who are ineligible for basic CAPI and whose sponsor signed the New Affidavit, sponsor deeming applies for a period of 10 years from the date of the sponsor’s execution of the Affidavit or date of the non-citizen’s arrival in the United States, whichever is later.

Factual Basis:

This amendment is necessary to comply with Welfare and Institutions Code Section 18940(b), which requires a 10-year sponsor-deeming period for extended CAPI.

Section 49-037.23 et seq.

Specific Purpose:

This section is being adopted to list the exceptions to sponsor deeming that apply to both basic and extended CAPI when the sponsor has signed a New Affidavit. They include the existing federal abuse exception when the victim is living in a different household than the abuser and adds the indigence exception as well as the state abuse exception that applies when the non-citizen is a victim of abuse by either the sponsor or the sponsor’s spouse.

Factual Basis:

Section 49-037.23 is necessary to comply with the federal and State rules for excluding a sponsor's income and resources when the sponsor has signed a New Affidavit.

Section 49-037.231 is simply a new placement and renumbering for current regulation MPP Section 49-035.723(c)(4). This section is based on federal law (8 USC 1631).

Section 49-037.232 is necessary to comply with the abuse exception under State law at Welfare and Institutions Code Section 18940(c).

Section 49-037.233 is necessary to comply with the indigence exception rules as outlined in 8 USC 1631(e) and POMS SI 00502.280.

Final Modification

Sections 49-037.231 and .232 are amended to add the word "or" for clarity.

Section 49-037.24

Specific Purpose:

This section is being adopted to specify that for both basic and extended CAPI, when the sponsor who has signed the New Affidavit is also the ineligible spouse or parent [as defined in MPP Section 49-005(i)], sponsor-deeming rules apply in lieu of deeming from an ineligible spouse or parent.

Factual Basis:

This adoption is necessary to comply with the federal regulations listed in POMS SI 00502.240.

Final Modification

This section is amended to provide clarity.

Sections 49-037.3 through .312

Specific Purpose:

These sections are being adopted to specify the rules for a non-citizen whose sponsor signed the Old Affidavit of Support.

Section 49-037.31 specifies that the deeming from a sponsor who signs the Old Affidavit of Support applies for non-citizens eligible for basic CAPI unless or until the sponsor dies, or three years have elapsed since the non-citizen's date of admission for permanent residence as established by the Immigration and Naturalization Service.

Factual Basis:

These sections are necessary to reflect that the deeming period for the Old Affidavit under federal law as previously reflected in MPP Section 49-035.723(d) only applies to those non-citizens who are eligible for basic CAPI [under Welfare and Institutions Code Sections 18938(a)(1) and (a)(2)]. Welfare and Institutions Code Section 18940(b) requires that federal deeming rules apply to all who are not eligible for extended CAPI.

Final Modification

Section 49-037.31 is amended to remove the words “or until” for clarity as these words aren’t necessary. Section 49-037.311 is amended to add the word “or” for clarity.

Section 49-037.32

Specific Purpose:

This section is being adopted to specify that for non-citizens who are ineligible for basic CAPI and whose sponsor signed the Old Affidavit, sponsor deeming applies for a period of 10 years from the date of the sponsor’s execution of the Affidavit or date of the non-citizen’s arrival in the United States, whichever is later.

Factual Basis:

This adoption is necessary to comply with the provisions of Welfare and Institutions Code Section 18940(b), which requires a 10-year sponsor-deeming period for extended CAPI.

Section 49-037.33 et seq.

Specific Purpose:

This section is being adopted to list the exceptions to sponsor deeming that apply to both basic and extended CAPI when the sponsor has signed an Old Affidavit. They include the existing federal exception when the non-citizen becomes blind or disabled after admission to the United States, adds the exception for non-citizens who are not Lawfully Admitted for Permanent Residence to the United States, and the state abuse exception that applies when the non-citizen is a victim of abuse by either the sponsor or the sponsor’s spouse.

Factual Basis:

These adoptions are necessary to comply with the federal and state rules for excluding a sponsor’s income when the sponsor has signed an Old Affidavit.

Section 49-037.331 is simply a new placement and renumbering for current MPP Section 49-035.723(d)(3). It is based on federal regulations [20 CFR 416.1166a(d)(3)].

Section 49-037.332 is necessary to comply with the Supplemental Security Income regulations described in POMS SI 01320.910C.1.

Section 49-037.333 is necessary to comply with the abuse exception under state law [Welfare and Institutions Code Section 18940(c)].

Final Modification

Sections 49-037.331 and .332 are amended to add the word “or” for clarity.

Section 49-037.34

Specific Purpose:

This section is being adopted to specify that for both basic and extended CAPI, when the sponsor who has signed the Old Affidavit is also the ineligible spouse or parent [as defined in MPP Section 49-005(i)], deeming from an ineligible spouse or parent applies in lieu of deeming from a sponsor.

Factual Basis:

This adoption is necessary to specify the different rules that exist in multiple deeming situations depending on which Affidavit the sponsor signed. This amendment is necessary to be consistent with POMS SI 01320.910C.3.

Final Modification

Section 49-037.34 is amended to reconstruct the sentence to make it more clear.

Section 49-037.4

Specific Purpose:

This section is being adopted to establish a heading (and a reference used previously in Section 49-037.233 of these amendments) for the complex set of indigence exception regulations that follow, and to specify that the indigence exception only applies to non-citizens whose sponsor signed the New Affidavit.

Factual Basis:

This adoption is necessary to comply with federal law and regulations in 8 USC 1631(e), and POMS SI 00502.280, respectively. These laws and regulations mandate the indigence exception for purposes of SSI/SSP eligibility. Welfare and Institutions Code Section 18940 requires that federal and state laws and regulations governing SSI/SSP must also govern CAPI.

Section 49-037.41 et seq.

Specific Purpose:

This section is being adopted to specify that the indigence exception applies when all of the following criteria are met:

- a. sponsor-deeming results in denial, suspension, or reduction of CAPI benefits,
- b. the non-citizen is unable to obtain both food and shelter,
- c. the non-citizen completes and signs form SOC 809, and
- d. the county determines that the indigence exception applies.

Factual Basis:

This adoption is necessary to comply with the SSI/SSP regulations in POMS SI 00502.280. Completion of the specified form is needed to ensure that the county obtains the specific information regarding the immigrant's income and living arrangements and that the applicant or recipient is aware that the sponsor's lack of support will be reported to the Immigration and Naturalization Service.

Section 49-037.42 et seq.

Specific Purpose:

This section is being adopted to specify that the indigence exception does not apply when the non-citizen lives with his or her sponsor, or receives free room and board while living with someone else.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 00502.280B.

Section 49-037.43 et seq.

Specific Purpose:

This section is being adopted to specify that the county must determine that the non-citizen who is not living with his or her sponsor and not receiving free room and board in another's household is unable to obtain food and shelter if:

- a. the total gross income that the non-citizen receives from all sources is less than the federal SSI individual rate if the non-citizen is not living with his or her spouse or the SSI couple rate if the person is living with his or her spouse, and
- b. the resources available to the non-citizen are below the applicable resource limit.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 00502.280B.

Section 49-037.44 et seq.

Specific Purpose:

This section is being adopted to specify that the total gross income and available resources counted for the purpose of determining whether the non-citizen is unable to obtain food and shelter consists of:

- a. All of the non-citizen's own income and resources, including those normally excluded.
- b. The income and resources of the immigrant's spouse (if living together), or parent(s) (if living with the minor immigrant),
- c. Any cash, food, housing, or other assistance provided by other individuals or agencies (including the sponsor).

Factual Basis:

This adoption is necessary to comply with the SSI/SSP regulations in POMS SI 00502.280 and to clarify that the income-counting rules for purposes of determining the indigence exception are different than those for CAPI eligibility in general.

Final Modification

Sections 49-037.441 and .442 are amended to replace a period and a comma with a semi-colon for consistency.

Section 49-037.45 et seq.

Specific Purpose:

This section is being adopted to specify that the indigence exception applies for a period of 12 consecutive months (including nonpayment months) beginning whenever all conditions are met and ending with the last day of the 12th month unless or until a new indigence determination is made. It also clarifies that sponsor deeming does not apply during this 12-month period.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 00502.280C.2, which allows for multiple occurrences of the 12-month exception period.

Final Modification

Section 49-037.453

In response to testimony, this section has been amended to clarify that the indigence exception provisions will not end if a new indigence exception determination is made prior to the expiration of the initial indigence exception period. This means that the indigence exception can be continually renewed with no break in the non-citizen being exempt from sponsor deeming. It also clarifies that a new indigence exception period can begin any time after the current period expires.

Sections 49-037.46 and .461

Specific Purpose:

These sections are being adopted to specify that the county has the responsibility to obtain the completed form signed by the recipient specifically applying for the indigence exception, which also provides information regarding the non-citizen's income and living arrangements.

Factual Basis:

This adoption is necessary to ensure that the non-citizen knows exactly what he or she is applying for, the associated reporting responsibilities, and that the sponsor's lack of support must be reported to the Immigration and Naturalization Service. This section is needed to ensure statewide uniformity for indigence-exception determinations.

Sections 49-037.462 through .462(b)

Specific Purpose:

These sections are being adopted to establish that it is a county's responsibility to contact the sponsor to confirm the non-citizen's allegations regarding the amount of income and resources that the sponsor provides or makes available to the non-citizen. Subsections (a) and (b) are needed to specify that the county must contact the Immigration and Naturalization Service for the sponsor's address when the sponsor's whereabouts are unknown, and to accept the non-citizen's allegation (when credible) if the sponsor cannot be located.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 00502.280D.

Sections 49-037.463 through .463(b)

Specific Purpose:

These sections are being adopted to require the county to prepare a written determination of whether or not the indigence exception can be applied based on all available evidence including the amount of income and resources available to the non-citizen. The county must also determine CAPI eligibility and payment amount based on this same information. Subsection (b) is being adopted to require the county to notify the Immigration and Naturalization Service and the Department of the indigence-exception determination.

Factual Basis:

These adoptions are necessary because allowing or denying the indigence exception will often be critical in approving or denying a CAPI application, making it imperative that the file contains documentation of the determination. These sections are also necessary to comply with SSI/SSP regulations in POMS SI 00502.280D. The federal law upon which the indigence exception is based (8 USC 1631) requires any agency making an indigence determination to notify the Attorney General of such determination. This requirement has been interpreted in SSI/SSP regulations POMS SI 00502.280E to mean notification of the Immigration and Naturalization Service.

Final Modification

Section 49-037.463(a)

In response to testimony, this section has been amended slightly to clarify that, when the indigence exception applies, counties are to determine CAPI eligibility and payment amount based on the income and support that the non-citizen receives from the sponsor and other sources. This differs from sponsor deeming where CAPI eligibility and payment amount are

based on the amount of the sponsor's income regardless of how much the non-citizen actually receives.

Sections 49-037.5 and .51

Specific Purpose:

These sections are being adopted to specify that the non-citizen is responsible for obtaining the cooperation in the development and documentation needed to determine the sponsor's income and resources, the information needed to make an indigence exception determination, or any other information needed to apply the sponsor-deeming rules.

Factual Basis:

These adoptions are necessary to comply with federal procedures outlined in SSI regulations POMS SI 01320.920. Information regarding the sponsor and his or her income and resources is often critical for the county to correctly determine the non-citizen's eligibility and payment amount, as required by MPP Section 49-015.23. This adoption is also necessary to clarify existing regulations at MPP Section 49-015.13 that require applicants to provide all documentation and information requested by the county.

Sections 49-037.511 and .512

Specific Purpose:

These sections are being adopted to specify that if a sponsor cannot be located, it is the non-citizen's responsibility to obtain evidence of the sponsor's income and resources; and that if the non-citizen does not provide requested verification of the sponsor's income and resources, the application must be denied or benefits must be suspended.

Factual Basis:

These adoptions are necessary in order to be consistent with SSI/SSP regulations in POMS SI 0132.920B.1. This adoption is also necessary to clarify existing regulations at MPP Section 49-015.13 that require applicants to provide all documentation and information requested by the county.

Section 49-037.52

Specific Purpose:

This section is being adopted to specify that the county must verify alleged lack of sponsorship with the Immigration and Naturalization Service whenever a non-citizen who is Lawfully Admitted for Permanent Residence alleges not having a sponsor.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 01320.915E and to clarify when it is necessary for the county to contact INS.

Final Modification

This section is amended to correctly capitalize the words “Lawfully Admitted for Permanent Residence” for consistency.

Section 49-037.53

Specific Purpose:

This section is being adopted to specify that the county must obtain a signed statement from the sponsor regarding the income and resources of the sponsor(s), unless the non-citizen’s statement would make him or her ineligible for CAPI. Information regarding the sponsor and his or her income and resources is often critical for the county to correctly determine the non-citizen’s eligibility and payment amount, as required by MPP Section 49-015.23.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 01320.920, which require the sponsor’s signed statement for the purposes of determining SSI/SSP eligibility.

Sections 49-037.54 through .542

Specific Purpose:

These sections are being adopted to specify that the county must obtain a copy of the Affidavit if the sponsor’s allegations regarding income and resources appear to allow eligibility for the non-citizen. It also specifies that the non-citizen is ultimately responsible for obtaining a copy of the Affidavit, and that the county must compare it with the sponsor’s allegation if the allegation appears to allow eligibility.

Factual Basis:

These adoptions are necessary in order to comply with SSI/SSP regulations in POMS SI 01320.920. Information regarding the sponsor and his or her income and resources is often critical for the county to correctly determine the non-citizen’s eligibility and payment amount, as required by MPP Section 49-015.23. This adoption is also necessary to clarify existing regulation at MPP Section 49-015.13 that requires applicants to provide all documentation and information requested by the county.

Final Modification

Sections 49-037.54 and .542

In response to testimony, these sections have been amended to clarify that the purpose of the county obtaining the Affidavit is to compare the sponsor's current allegations regarding income and resources with the income and resources that were recorded on the Affidavit. The amendments also clarify that it is not necessary to obtain the Affidavit if the non-citizen is otherwise exempt from sponsor deeming.

Section 49-040.74

Specific Purpose:

This section is being adopted to refer to a new section on sponsor deeming. Section 49-037 is being adopted for ease of reference and clarity since the same sponsor-deeming rules apply to the deeming of both the sponsor's income and resources.

Factual Basis:

This section is necessary to refer to Section 49-037 in order to describe the types of sponsor-deeming rules in the rest of this section as well as in 20 CFR 416.1160, 416.1166a, and 416.1204 that govern SSI eligibility.

Section 80-310(s)(6)

Specific Purpose:

This section is adopted to provide information on the CAPI Indigence Exception Statement (SOC 809).

The California Department of Social Services is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the SOC 809. This form is not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures, because it would be cumbersome and impractical.

Factual Basis:

This section is necessary as the form SOC 809 is to be completed by CAPI applicants or recipients who are claiming that they meet the indigence exception to sponsor-deeming.

Final Modification

This section is amended to change the revision date of the form. The privacy statement was added to the form which resulted in a revision date change.

b) Identification of Documents Upon Which Department Is Relying

Assembly Bill 429 (Chapter 111, Statutes of 2001)

8 U.S.C. Section 1631

20 CFR 416.1160, 416.1166a, and 416.1204

Social Security Administration's Program Operations Manual Sections SI 00502.240; SI 00502.280; SI 01320.910C; SI 01320.915E; and SI 01320.920.

c) Local Mandate Statement

These regulations impose a mandate upon county welfare departments to administer the program, but not upon local school districts. Welfare and Institutions Code Section 18942 requires CDSS to reimburse the counties for the cost of actual CAPI payments and for any administrative costs actually attributable to those payments.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on November 13, 2002 in Sacramento, California. Joint written testimony was received from the Legal Services of Northern California, National Immigration Law Center, Legal Assistance for Seniors, Oakland, and National Senior Citizen Law Center (referred to as Law), and the County of Los Angeles, Department of Public Social Services (referred to as LADPSS).

General

1. Comment:

"The undersigned write to you regarding the proposed revisions to the Cash Assistance Program for Immigrants (CAPI) immigrant provisions (ORD # 0102-01). We are non-profit organizations that serve low-income residents of our communities. In the course of providing these services, we assist low-income immigrants, including those applying for the CAPI program. We are extremely concerned that these proposed regulations would impede access by low-income seniors and persons with disabilities to the CAPI program.

“In particular, the provisions for reporting indigent sponsors and immigrants to the INS, and the consequences of an immigrant being unable to verify the sponsor’s income or resources are likely to result in inappropriate denial of benefits to immigrants. We discuss these in detail, along with our other concerns, below.” (Law)

Response:

Sending the names of sponsors of immigrants who qualify for the indigence exception to the INS does not affect the immigrant’s CAPI eligibility in any way. In fact, we are unaware of any adverse effects that this INS reporting will have for either the sponsor or the immigrant.

In many cases, a correct and accurate determination of CAPI eligibility and payment amount cannot be made without information about the sponsor’s income and resources. The sponsor’s income and resources must be verified in order to determine how much income and resources must be deemed from the sponsor to the applicant/recipient. Welfare and Institutions Code Section 18940 specifically requires sponsor deeming in the CAPI program.

Section 49-037.463(b)

2. Comment:

“I. REPORTING TO THE I.N.S.

“A. No federal authority for reporting in state-funded programs

“DSS proposes to report immigrants and their sponsors to the INS if they apply for state funded CAPI benefits and are determined to meet the “indigence” exemption from the sponsor deeming rules. Proposed MPP Section 49-037.463(b). As this reporting requirement is not specifically authorized under the federal law governing *state* benefit programs, the state does not have the authority to impose such a requirement. The federal provisions on deeming in state-funded programs do not include a reporting requirement, and this omission is significant. The state must construe its CAPI rules consistently with federal law, and where possible other state laws. DSS should not adopt this administrative requirement, which was intended to apply only to five federal programs, and which will impede the state’s ability to ensure that eligible applicants receive the assistance to which they are entitled.

“Congress established two sets of sponsor deeming rules under the welfare and immigration laws passed in 1996. The rules governing the federal means-tested public benefit programs (SSI and four other federal programs) are detailed in 8 U.S.C. 1631, while the rules governing state-funded public benefit programs are found in 8 U.S.C. §1632. *See also* 8 U.S.C. §1624.

“The federal benefit provisions include an administrative requirement that agencies making indigence determinations in certain *federal* programs notify the Attorney

General. 8 U.S.C. §1631(e). But Congress chose *not* to establish such a mechanism (or other reporting requirement) in the context of *state* benefit programs, such as CAPI. If Congress had intended to impose such a requirement (or even to provide an option for states adopting indigence exemptions to notify the INS) it would have done so. *See Bates v. U.S.*, 522 U.S. 23 (1997)(where Congress includes particular language in one section of a statute, but omits it in another section of the same act, it is generally presumed that Congress acted intentionally and purposefully in the disparate inclusion or exclusion).

“Under the U.S. Constitution, Congress has plenary authority over immigration matters, including the rules governing access to benefit programs for immigrants, as well as any procedures for reporting immigrants to or otherwise cooperating with the Immigration and Naturalization Service. *LULAC v. Wilson*, 908 F. Supp. 755, 786 (C.D.Cal. 1995) (the federal government is responsible for regulating immigration, and the state is powerless to devise its own immigration regulations that purport to supplement the federal immigration laws).

“The federal court in *LULAC* held that state-created immigrant reporting schemes are impermissible because they violate Congress’ authority to control immigration. Thus, California already has failed in its attempt to implement reporting provisions that were not *specifically* authorized by federal law. Additionally, the court rejected the state’s request to implement its own more sweeping reporting rules (Proposition 187’s reporting and cooperation provisions) after the passage of the Personal Responsibility Act (“PRA”). *LULAC v. Wilson*, Case No. 94-7569 MRP (order issued March 13, 1998). *See also* the court’s Memorandum of Law re Remaining Issues in Consolidated Cases at 16 (Nov. 1, 1997)(“states have no power to effectuate a scheme parallel to that specified in the PRA, even if the parallel scheme does not conflict with the PRA”).

“Recognizing this conflict, the California Department of Community Services and Development deleted a reporting provision from the state regulations governing the LIHEAP and weatherization assistance programs. *See Non Profit Housing Association, et al. vs. Micciche*, Case No. 999554, Settlement Agreement, para. 6 (Superior Ct. San Francisco, filed April 5, 2001).

“Congress clearly did not contemplate that states would, and did not authorize states to, bombard the Attorney General with unsolicited reports concerning eligibility decisions in potentially hundreds of state programs. A state’s unilateral decision to submit notices of determinations on programs outside the scope of 8 U.S.C. §1631(e) therefore conflicts with congressional intent.”

“b. CAPI rules must be consistent with federal law

“The Cash Assistance Program for Immigrants was established to provide state-funded assistance to immigrants who were rendered ineligible for federal SSI as a result of the 1996 federal welfare law. California Welfare & Institutions Code (W&I Code) §18938. Except as otherwise specified, the CAPI program adopts the regulations governing the SSI program, including the deeming rules and exemptions which apply to that program. W&I Code §18940. There is no reporting requirement specified in the state statute.

“The agency must construe CAPI rules consistently with federal law. Like the procedures described below, the notification provisions in the indigence exemption for federal programs should not be imported into the state’s CAPI program. The CAPI program, which is implemented by counties, cannot be interpreted to incorporate all administrative requirements that apply to local Social Security Administration (SSA) offices administering the SSI program. For example, county CAPI offices are not required to submit caseload or other reports to the SSA. SSA has no mechanism for receiving such data from a state program not under its jurisdiction, and it would be improper to interpret the state law to incorporate such requirements.

“Similarly, SSA in its Program Operations Manual Systems (POMS) SI 00502.280, describes the administrative mechanism for SSA local offices to record indigence determinations in the SSI program, including instructions that copies be sent to an INS and an SSA address. Although the Statement of Reasons cites this POMS section as authority for the reporting requirement, DSS indicated that it does not feel bound by all POMS provisions, as it did not even suggest that CAPI offices send a copy of their notices to the SSA.

“Requiring that counties contact the INS whenever they make an indigence determination in the state’s CAPI program is neither practical nor consistent with congressional intent. The state CAPI law and the program’s attempt to conform to federal rules should not be read to establish unauthorized burdens on federal agencies. The harm of imposing this administrative requirement on the counties, which is not mandated by federal or state law, far outweighs any benefit. The specter of a county benefit agency’s communication with the INS could chill access to a wide array of state and county programs for a much broader group of immigrants and their U.S. citizen family members. Adopting this unnecessary requirement would undermine the state mandates that benefit programs be administered humanely, in a manner ensuring that applicants secure the aid to which they are entitled. *See* Calif. W&I Code §§10000, 10500.” (Law)

Response:

Under CAPI, a state-funded benefits program, cash assistance is provided to aged, blind, and disabled legal immigrants who meet certain criteria (see Chapter 10.3 (commencing with Section 18937), Part 3, Division 9, Welfare and Institutions Code). To be eligible for CAPI benefits, a person must complete the application process and meet specified conditions, including not having more income or resources than

permitted (MPP Sections 49-010.15 and .16). Generally, an applicant's eligibility for CAPI is based in part on the applicant's income, including deemed income of a sponsor; if the sponsor of a CAPI applicant or recipient has signed an Affidavit of Support, a portion of the sponsor's income is "deemed," or considered to belong, to the applicant or recipient, regardless of whether the sponsor actually makes the money available to him or her (MPP Section 49-035.7(d); and see MPP Section 49-035.72).

Federal and state deeming rules and exemptions governing the SSI/SSP program, including deeming rules and exemptions, also govern the CAPI program (Section 18940, Welfare and Institutions Code). Federal law relating to the SSI program establishes an indigence exception to sponsor deeming for sponsored aliens who, in the absence of governmental assistance, would be unable to obtain food and shelter, taking into account the alien's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor [8 USC 1631(e)]. The federal law establishing the indigence exception requires that the Social Security Administration notify the INS, an agency of the federal Department of Justice, of each indigence exception determination, including the names of the sponsor and the sponsored alien [8 USC 1631(e)(2); POMS SI 00502.280B(3)]. Based on these federal provisions, CDSS developed these proposed regulations, which authorize an indigence exception to CAPI based on the federal indigence exception and require counties to notify the INS of CAPI eligibility determinations under this exception.

The comments to these proposed regulations argue that the state is not authorized to notify the INS of the names of CAPI applicants and their sponsors because the reporting requirement is not specifically authorized under the federal law governing state benefit programs (8 USC 1632). However, the indigence exception itself is established in 8 U.S.C. 1631, which relates to the governance of the SSI program and is not part of the federal law governing state benefit programs. The state's obligation to allow an indigence exception is based on the state law requirement – set forth in the CAPI statutory scheme – that CAPI comply with the law governing the SSI/SSP program (Section 18940, Welfare and Institutions Code). If the state is required to allow an indigence exception to sponsor deeming at all, that requirement necessarily incorporates all aspects of the exception, as established by the federal government. Because 8 USC 1631, the federal statute creating the indigence exception, requires INS notification, and the state must follow that law in administering CAPI, the state must also require INS notification. The argument set forth in the comments is advocating that CDSS selectively apply portions of federal law – namely, allow an indigence exception to sponsor deeming – without applying the remainder of the same provision, which creates the INS notice requirements.

The comments cite *LULAC v. Wilson* [908 F.Supp. 755 (1995)] as supporting the argument that the state is not authorized to notify the INS of the names of CAPI recipients and their sponsors. The comments state that the INS has plenary authority over immigration regulation and that the federal court in *LULAC* held that state-created immigrant reporting schemes are impermissible because such schemes violate Congress' authority to control immigration.

Although the federal government does have exclusive constitutional authority over the regulation of immigration, notifying the INS of CAPI eligibility determinations does not constitute "immigration regulation." The *LULAC* case addressed the constitutionality of Proposition 187, an initiative measure passed by California voters, the stated purpose of which was to "prevent illegal aliens from receiving benefits or public services in California" (Section 1, App. A, Proposition 187). In determining whether the proposition's provisions were preempted by federal law, the *LULAC* court applied a three-part test set forth in *De Canas v. Bica* [424 U.S. 351 (1976)] (*LULAC*, at p. 767).

The first part of the test is whether a state requirement is a "regulation of immigration." Citing the *De Canas* case, the court noted that the fact that aliens are the subject of a state statute does not render it immigration regulation, and stated that that regulation of immigration is "essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain" (*LULAC*, at p. 768). Proposition 187 contained a requirement that any public entity in California that determines or "reasonably suspects" that an applicant for public benefits is an alien in the country in violation of federal law notify the INS of the "apparent illegal status" of the applicant (Section 5(c)(3), Prop. 187). The *LULAC* court held that this provision was impermissible because, together with other provisions of Proposition 187, it directly regulated immigration by creating a "comprehensive scheme to detect and report the presence and effect the removal of aliens" (*Id.*, at p. 768). Thus, contrary to the advocates' characterization, the court's holding was not that state-created immigrant reporting schemes are generally impermissible; the court held that the particular reporting scheme set forth in Proposition 187 directly regulated immigration and, on that basis, was impermissible. In contrast, the CAPI notice requirement does not involve or inform determinations of whether aliens should be admitted to or remain in the United States. The CAPI notice requirement is distinguishable in purpose and effect from the reporting requirement of Proposition 187, and does not rise to the level of immigration regulation.

The *LULAC* court's discussion of another provision of Proposition 187 is helpful in considering the notice requirement. In addition to requiring reporting to the INS, as discussed above, Proposition 187 provided for the denial of social services, health care, and public education benefits to persons not lawfully present in the United States (see *LULAC*, at p. 765). With regard to this provision, the court stated that "[w]hile the denial of benefits to persons not lawfully in the United States may indirectly or incidentally affect immigration by causing such persons to leave the state or deterring them from entering California in the first place, such a denial does not amount to a 'determination of who should or should not be admitted into the country.'" (*LULAC*, at

p. 769). Thus, concluded the court, the benefit denial did not constitute an impermissible regulation of immigration and was not preempted by federal law (*Id.*). The court further stated that the Proposition 187 provisions “have the permissible purpose and effect of denying state-funded benefits to persons who are unlawfully present in the United States” and “are not a regulation of immigration” (*Id.*). The CAPI notice requirement would have far less impact on immigration than the benefit denial described in *LULAC* and certainly would not amount to a determination of who should or should not be admitted into the country. Therefore, the proposed notice requirement does not constitute immigration regulation.

The comment points out that the SSI’s Programs Operations Manual requires local SSA offices to send a copy of the INS notification to an SSA address and argue that, by requiring counties to notify the INS when an indigence exception is granted but not to send a copy to the SSA, CDSS is essentially picking and choosing which federal requirements to follow. The proposed regulations do not require counties to notify the SSA when the indigence exemption is granted for two reasons. First, the code section establishing the indigence exemption and requiring INS notification (42 USC 1631) does not require that the SSA be notified. Second, in our view, a local SSA office sending a copy of the INS notification to the SSA would appropriately be characterized as a purely administrative function, a branch office notifying its headquarters of action taken with regard to a third party, the INS. The SSA is not the headquarters or oversight agency for the CAPI program or for counties.

Section 49-037.512

3. Comment:

“II. INABILITY TO VERIFY SPONSOR INCOME AND RESOURCES

“The Proposed regulations, appropriately state at MPP §49-037.462(b) that “If the sponsor cannot be located, accept the non-citizen’s allegation if it is credible and does not conflict with other information in the file.” Yet, proposed MPP §49-037.512 contradicts this by stating: “If the non-citizen does not provide requested verification of the sponsor’s income and resources including a signed statement from the sponsor regarding his or her income and resources, the county must deny the application or suspend eligibility and payment. ...” As discussed below, such a rule would also be inconsistent (sp) with two other programs, Food Stamps and CalWORKs. The state should delete the proposed subsection .512.

“In addition, the state should have specific hardship provisions for when a sponsor cannot be located or does not cooperate with verification. The failure to do so penalizes applicants who make good faith attempts to secure permission from the sponsor, but who are unable to obtain the requisite information through no fault of their own. In addition, the regulations have no provision that the agency assist in locating the third party. (Such regulations exist in other programs, *see e.g.* CalWORKs regulation CITE.)

“We urge CDSS to clarify that the allegations of the applicant, when not inconsistent with file information, shall be sufficient where good cause is present, including but not limited to situations where applicants can demonstrate that they have made a good faith attempt to secure the required information. The waiver should be automatic in cases where one parent of a child provides information, but the other refuses.

“A “good cause” waiver would be consistent with the statute upon which these proposed regulations are based -- 42 U.S.C. §1383 (e) does not require the agency to deny assistance to these applicants. Adoption of a good cause waiver also would avoid potential conflicts with other federal statutes governing the SSI program. The regulations, as currently written, undermine the sponsor deeming exemptions for domestic violence survivors, and immigrants who would go hungry or homeless without assistance (the “indigence” exemption). *See* 8 U.S.C. §§ 1631(f) and (e). In creating these exemptions, Congress chose to provide access to essential programs, including SSI, Food Stamps and TANF, for otherwise eligible immigrants who would be destitute in the absence of assistance. The indigence exemption was designed to relieve hunger and homelessness in cases where the sponsor is not able or willing to provide adequate support. Penalizing applicants who cannot locate their sponsors or who have sponsors who are abusive, or so unwilling to provide support that they refuse to cooperate in verification would seriously impede this goal.

“In implementing the indigence exemption under 8 U.S.C. §1631(e), the U.S. Department of Agriculture (USDA) and the SSA understood that some applicants do not have access to their sponsor’s income and resources, and may not be able to guarantee their sponsor’s cooperation in providing information. Both agencies established an income threshold that measures the immigrant’s income, including amounts actually received from the sponsor, but excluding any income or resources that are not made available to the indigent immigrant.¹ These rules recognize that indigent immigrants may have difficulty securing information or permission from their sponsors. In some cases, the immigrant may not know the whereabouts of his or her sponsor; in other cases, the sponsor may not cooperate in providing information.

“In reviewing USDA’s interpretation of the federal food stamp deeming statutes, which are identical in relevant part to those governing the SSI program, Congress recently confirmed that it is unwilling to punish benefit applicants based on the actions or

¹ USDA, “Food Stamp Program: Noncitizen Eligibility and Certification Provisions of Pub. L. 104-193, as Amended by Public Laws 104-208, 105-33 and 105-185,” 65 Fed. Reg. 70202 (Nov. 21, 2000), amending 7 C.F.R. §273.4(c)(3)(iv); SSA Program Operations Manual System (POMS) SI 00502.280. If the immigrant and SSA are unable to reach the sponsor, the agency accepts the immigrant’s credible statement regarding the lack of support. *See also* the regulations governing California’s TANF program, MPP 43-119.221(c) (“When a sponsored immigrant is unable to provide the necessary information regarding their sponsor and the county can not establish contact with the sponsor, and it is determined that the sponsored immigrant would go hungry and homeless without aid, the sponsored noncitizen is ruled indigent” and is granted assistance).

omissions of third parties. During the debate on the Farm Security and Rural Investment Act of 2002, Senator Leahy, Chair of the Judiciary and Nutrition Committees explained:

“As part of our deliberations, we reviewed USDA’s recent regulations on sponsor deeming and found them to be an appropriate policy consistent with our understanding of how deeming should operate.... We also appreciate that USDA was sensitive to not restricting food assistance to immigrants whose sponsors refuse to cooperate by providing requested paperwork. We do not expect USDA to make any changes in this area.

“Farm Security and Rural Investment Act of 2002—Conference Report S4035 (daily ed., May 8, 2002).

“Incorporating a good cause waiver to the CAPI requirement would serve Congress’ intent and would avoid serious harm to low-income seniors and persons with disabilities. We have already seen in California that such harm can occur. Low-income applicants who are unable to guarantee the cooperation of third parties can face severe hardship, including homelessness:

“Three years after entering the U.S., a woman who was examined at an eye clinic learned that she was permanently blind. After receiving this diagnosis, she applied for CAPI. Her sponsor was no longer in contact with her. When the woman applied for benefits, her sponsor refused to provide any financial information to the benefit agency. The woman currently relies on a general assistance grant that is insufficient to pay rent. She owes several months of back rent, and is living temporarily with family members who have asked her to move out as soon as possible. Without access to sufficient cash assistance, the blind woman will become homeless.

“An elderly man who has been in the U.S. for more than three years is not receiving any support from his sponsor. He tried to apply for CAPI, but the sponsor refused to provide income information because he did not believe that he was required to support the immigrant beyond the three-year period in the affidavit of support that he signed. Due to the sponsor’s refusal, the elderly man was unable to secure benefits. He is currently sleeping on a friend’s couch.

“These seniors and persons with disabilities, who have no way of controlling their sponsor’s behavior, risk threats to their physical and mental health as well as brutal economic hardship.

“For all of the above reasons, we urge you to incorporate a good cause or hardship exception to the proposed requirement, and to remove the blanket denial of benefits to persons who cannot secure permission from their sponsors.” (Law)

Response:

Welfare and Institutions Code Section 18940 requires that the federal and state laws and regulations governing SSI/SSP also govern CAPI. Although technically not regulations, the instructions in SSA's POMS act as de facto regulations in SSA's daily operation of the SSI/SSP program. Whatever instructions are in place for Food Stamps and CalWORKS are irrelevant for CAPI.

The general rule governing the non-citizen's responsibility to provide sponsor information is found in POMS SI 01320.920 – Verifying the Sponsor's Income and Resources. This general rule is applicable for both the Old and the New Affidavit. There is no good cause or hardship exemption to this rule in POMS. The rule states:

“1. Responsibility for Obtaining Sponsor's Cooperation

“An alien is responsible, by law, for obtaining the sponsor's cooperation in the development and documentation of required information. If either the alien or the sponsor fails to cooperate (e.g., the alien is unsuccessful in obtaining the sponsor's cooperation), deny the claim or suspend eligibility and payment in accordance with SI 00501.510ff. or SI 02301.260, respectively.

“If a sponsor cannot be located or leaves the U.S., making verification of the sponsor's current income and resources administratively unfeasible (e.g., involves contact with foreign employers), it is the alien's responsibility to obtain evidence. If the alien does not provide verification of the income and resources, deny the claim or suspend eligibility and payment in accordance with SI 00501.510ff. or SI 02301.260, respectively.”

An exception to this general SSI/SSP rule exists for the indigence exception when the sponsor's whereabouts are unknown and the sponsor cannot be located. In that instance, and that instance only, can the non-citizen's statement be accepted (if credible) without obtaining verification from the sponsor. It is important to note that this exception exists only when the sponsor cannot be located; not when he or she is simply uncooperative or when SSA cannot “reach” the sponsor, as alleged in the footnote contained in the comment above. The specific rule for indigence exception purposes is found in POMS SI 00502.280D.2, which states:

“Contact the sponsor to confirm the alien's allegations regarding amounts of income and resources the sponsor provides or makes available to the alien. If the alien does not know the sponsor's whereabouts, contact INS using INS Form G-845 to obtain the sponsor's address. If you cannot locate the sponsor, accept the alien's signed allegation if the allegation is credible and does not conflict with other information in file. If the allegations are not creditable or conflict with other information in file, weigh all evidence in file and make a decision based on all the information you have obtained.”

Section 49-037.312

4. Comment:

“III. CESSATION OF DEEMING FOR IMMIGRANTS WHOSE SPONSORS EXECUTED THE OLD AFFIDAVIT OF SUPPORT

“MPP § 49-037.312 proposes that sponsor deeming for immigrants whose sponsors executed an Old Affidavit of Support would end when “the non-citizen has resided in the United States for three years since the date of admission for permanent residence as established by the Immigration and Naturalization Service.” The State is interpreting the phrase, “entered the United States on or after August 22, 1996” to mean the date an applicant adjusted to lawful permanent residence, rather than when he or she physically entered the county. The date of physical entry is the plain meaning of the term “enter,” and the interpretation of the term used by the Social Security Administration. The misinterpretation of the term in the draft regulations will prevent needy immigrants from securing critical CAPI assistance. As you are aware, the issue of how to interpret “entered” is currently pending in the San Francisco Superior Court in Megrabian v. Saenz, CPF - 02-501626 (2002).” (Law)

Response:

The entry date issue will be resolved by the above-mentioned lawsuit, and is not a part of this regulation package.

Section 49-037.41

5. Comment:

“We recommend modifying this section to include the following criteria:

“.415 The sponsor refused to support the non-citizen.

“.416 The sponsor’s whereabouts are unknown as stated on the non-citizen’s written declaration. (LADPSS)

Response:

Proposed Section 49-037.41 lists the required criteria for the indigence exception to be applied. Although either or both of these circumstances (commenter’s recommended Sections 49-037.415 and .416) may exist in an indigence exception case, there is no basis in federal law or POMS that they are a required criteria for an individual to meet the indigence exception. Adopting these recommended sections would actually be more burdensome for the applicant.

Section 49-037.453

6. Comment:

“We recommend modifying this section as follows:

“.453 The exception period ends with the last day of the 12th month unless *a new indigence determination is made prior to expiration of the existing period. If necessary, a new 12-month period may begin any time after the current period expires.*” (LADPSS)

Response:

For clarity, this section will be amended as suggested above, with a minor modification.

Section 49-037.52

7. Comment:

“IV. BENEFITS PENDING VERIFICATION OF LACK OF SPONSORSHIP

“The draft regulations propose that the County verify any alleged lack of sponsorship as part of the application process. MPP §49-037.52. The state does not propose any conditional eligibility, however. Otherwise eligible applicants should get benefits without sponsor deeming pending INS verification of lack of sponsorship when applicants have signed a credible statement to this effect. (Counties should advise immigrant executing these statements of the consequences of conditional eligibility, that if the INS confirms there is a sponsor, and the immigrant is otherwise ineligible for sponsor indigence or domestic violence anti-deeming criteria, this will cause an overpayment.) To assist the counties (and applicants), the state regulations or a handbook section, should list of categories of LPRs who don't have sponsors.” (Law)

Response:

The SSA offers no conditional payments for those lawfully admitted permanent residents (LAPRs) who allege no sponsor while a response from INS is pending, so there is no basis for offering them to CAPI applicants. Most LAPRs do have a sponsor, although there are exceptions in individual cases. To the best of CDSS’ knowledge, INS has not published a definitive list of LAPR codes that would indicate in all cases whether or not an immigrant has a sponsor. CDSS is willing to research this issue further to see if a desk-aid type of document could be produced that would offer guidance in this area.

Section 49-037.541

8. Comment:

“V. RESPONSIBILITY FOR OBTAINING THE AFFIDAVIT OF SUPPORT

“The state makes the applicant responsible for securing a copy of the affidavit. MPP §49-037.541. The state should follow the process used by the Social Security Administration, and have the counties submit the applicable INS form. The counties are in a better position to make these requests, as they can easily maintain and process the forms, without the barriers of language, age, disability and poverty the applicants face.” (Law)

Response:

Approximately one year ago, the San Francisco INS office informed CDSS that INS headquarters has instructed their offices to stop releasing Affidavits of Support to requesting agencies. The immigrant can request the document under the Freedom of Information Act. Existing regulation Section 49-015.13 requires the CAPI applicant to provide all documentation and information requested by the county welfare department in order to be found eligible for CAPI.

Sections 49-037.54 and .542

9. Comment:

“VI. CLARIFICATION OF PROPOSED REGULATORY LANGUAGE

“Section 49-037.54 and .542 mention comparing the Affidavit and the sponsor’s “allegations.” The state should clarify which allegations the county needs to compare. (I.e. is this a comparison of the amount of income the sponsor had when s/he signed the affidavit and his/her current income? Is it a comparison of resources? Both?)

“In addition to clarifying this language, the regulations should clearly separate and distinguish between the process used for normal deeming and that used in the indigence exemption (where it doesn’t matter how much the sponsor is earning).” (Law)

Response:

Clarifying language has been added to these sections and Section 49-037.463 in response to the concerns raised by this comment. The latter section was amended slightly to clarify that CAPI eligibility and payment amounts are based on income actually received from the sponsor and other sources when the indigence exception is being applied, as opposed to regular sponsor deeming.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. No public comment was received as a result of this 15-day renotice.